

RESOLUTION 11-09-2017

DIGEST

Public Resources Code: Recycling at Shopping Centers and Strip Malls

Amends Public Resources Code sections 42649.1 and 42649.2 to require shopping centers and strip malls to collect recyclable materials where the customers enter and exit and where shipments of goods are received.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Public Resources Code sections 42649.1 and 42649.2 to require shopping centers and strip malls to collect recyclable materials where the customers enter and exit and where shipments of goods are received. This resolution should be approved in principle because it promotes and encourages recycling by businesses and the public, enforces the existing language of the specified code sections, and will not be a significant cost burden to shopping and strip mall owners/operators.

By requiring that shopping and strip malls provide recycling, this resolution seeks to encourage pro-social behavior with regards to litter abatement and resource recovery and recycling. Additionally, the proposal makes clear a possible ambiguity in sections 42649.1 and 42649.2 of the Public Resource Code, which is arguably ambiguous regarding the requirement of strip malls and shopping centers to provide recycling where consumers enter and exit the shopping/strip mall.

Finally, requiring strip malls and shopping centers will help the state reach a recycle rate of 75% statewide. While the requirement to offer recycling could be a minor burden on some businesses, it is important that all commercial enterprises contribute to the goals of litter abatement and recycling to the fullest extent possible.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Public Resources Code sections 42649.1 and 42649.2 to read as follows:

1 § 42649.1

2 For purposes of this chapter, the following terms mean the following:

3 (a) "Business" means a commercial or public entity, including, but not limited to, a firm,
4 partnership, proprietorship, joint stock company, corporation, or association that is organized as
5 a for-profit or nonprofit entity, a shopping center, a strip mall, or a multifamily residential
6 dwelling.

7 (b) "Commercial solid waste" has the same meaning as defined in Section 17225.12 of

8 Title 14 of the California Code of Regulations.
9 (c) “Commercial waste generator” means a business subject to subdivision (a) of Section
10 42649.2.

11 (d) “Self-hauler” means a business that hauls its own waste rather than contracting for
12 that service.

13
14 § 42649.2

15 (a) (1) On and after July 1, 2012, a business that generates more than four cubic yards of
16 commercial solid waste per week or is a multifamily residential dwelling of five units or more
17 shall arrange for recycling services, consistent with state or local laws or requirements, including
18 a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste,
19 to the extent that these services are offered and reasonably available from a local service
20 provider.

21 (2) Shopping centers and strip malls shall collect recyclable materials both where the
22 customers enter and exit and where shipments are received.

23 (b) A commercial waste generator shall take at least one of the following actions:

24 (1) Source separate recyclable materials from solid waste and subscribe to a basic level of
25 recycling service that includes collection, self-hauling, or other arrangements for the pickup of
26 the recyclable materials.

27 (2) Subscribe to a recycling service that may include mixed waste processing that yields
28 diversion results comparable to source separation.

29 (c) A property owner of a multifamily residential dwelling may require tenants to source
30 separate their recyclable materials to aid in compliance with this section.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: In 2011, with AB 341, California set a goal for statewide recycling at 75% by the year 2020. Since July 1, 2012, AB 341 requires every business that generates more than 4 cubic yards of commercial solid waste per week and multifamily residential dwellings of 5 units or more to arrange for recycling services. Despite AB 341, since 2010, the state’s recycling rate has remained flat at only 50%. See the data for “California’s Statewide Recycling Rate,” available at: <http://www.calrecycle.ca.gov/75Percent/RecycleRate/default.htm>.

Most shopping mall and strip mall businesses only collect recycling at the “back end,” where they receive their shipments of goods. For example, they collect cardboard that was used as shipping packaging. However, many shopping malls and strip malls are not collecting recycling at the “front end,” where the customers entering and exiting the businesses are placing many recyclable materials into trash cans for the landfill.

In 2014, California passed AB 1826, in require businesses that generate organic waste to collect such waste for recycling. However, diverting organic waste generated by businesses will not get

us from the current rate of 50% recycling to the goal of 75% recycling within the next three years.

The Solution: In order to accomplish the goal of 75% recycling, we need to change more of our habits. This resolution will require shopping centers and strip malls to purchase containers to collect recyclable materials from their customers. It will also require employees to keep landfill trash separated from the recyclable materials.

AB 341 already established the expensive part to force local municipalities to create mandatory recycling programs for businesses that generate over 4 cubic yards of waste per week. This resolution will make the already-established programs more effective by requiring shopping mall and strip mall businesses to collect recyclable materials at the front end, where the customers are, as well as at the back end, where they receive their shipments of goods.

IMPACT STATEMENT

The resolution does not affect any other statute or case law other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

AB 341 (Chesbro, 2011): to require that by the year 2020, not less than 75% of solid waste generated by source reduced, recycled, or composted. *See* Title 14 California Code of Regulations §§ 18835 – 18839. *See also* CalRecycle Mandatory Commercial Recycling Frequently Asked Questions, available at:

<http://www.calrecycle.ca.gov/Recycle/Commercial/FAQ.htm>

AB 1826 (Chesbro, 2014): requiring collection of organic waste for certain types of businesses.

AUTHOR AND/OR PERMANENT CONTACT: Catherine Rucker, P.O. Box 854, Novato, CA 94947, Cell: 415-246-6647, catherinerucker@me.com

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

SAN DIEGO COUNTY BAR ASSOCIATION

The SDCBA Delegation urges Disapproval of Resolution 11-09-2017. The proposed language itself is problematic as it reads as imposing an affirmative obligation on shopping centers and strip malls to “collect” recyclable materials from customers versus the indicated intent of imposing a duty to provide recycling collection containers for potential use by customers. The Delegation further believes this Resolution should be Disapproved on fundamental grounds as well. A core principle of freedom is that citizens should not be living in uncertainty over whether they are breaking any laws. Sadly, our country and state have continuously eroded that principle of democracy by increasingly passing micromanaging legislation that makes innocent people unknowingly guilty of top-down regulations governing everyday conduct. We should not

increase this problem. This Resolution adds one of those trivial requirements that honest business owners might not even be aware of and would be in violation for not knowing. It increases the chance that honest business owners who may be supportive of recycling efforts are nevertheless subjected to shakedown lawsuits for technical breaches of this proposed requirement.

Our delegation understands and agrees with the proponent's goal of increased recycling, and supports a less-invasive option of government encouraging the placement of recycling bins at the locations favored by the proponent.